
A BILL FOR AN ACT

RELATING TO LAND USE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. While Hawaii is a state committed to conserving
2 and protecting agricultural lands, not all of the lands
3 classified as agricultural are fit for agricultural purposes.
4 In particular, lands with soil classified by the land study
5 bureau's detailed land classification as overall (master)
6 productivity rating class D and E are considered marginal and
7 may be better suited for non-agricultural purposes.

8 The amount of land designated in the agricultural district
9 far exceeds the amount of land classified for urban and rural
10 uses combined. In 2003, an estimated 1,932,429 acres of land
11 were in the agricultural district (forty-seven per cent),
12 whereas, there were only 196,215 acres of urban land (five per
13 cent) and 10,108 acres of rural land (two-tenths of one per
14 cent). The vast amounts of land classified as agricultural
15 stems from the State's practice of designating the agricultural
16 classification a "catch-all" district for lands neither urban,
17 rural, or conservation.



1 Of the 1,932,429 acres of land designated agricultural, it
2 is estimated that less than half of the land can actually be
3 used for agriculture. In 1997, there were 292,107 acres used
4 for crops. In 2002, only 211,120 acres were used for crops.
5 This decrease of 80,987 acres in the land used for crops likely
6 reflected Hawaii's decreasing dependence on agriculture as an
7 industry.

8 There is a long established practice of permitting
9 residential communities on land classified for agricultural use.
10 Agricultural land has been and will continue to be used for
11 residential purposes because it is relatively inexpensive,
12 available, and not suited for agricultural uses. There are many
13 subdivisions throughout the State comprised of marginal lands,
14 but in the agricultural district and zoned to include
15 residential uses by the respective counties. This has led to
16 agricultural land values rising beyond their value for
17 agricultural purposes. The counties have historically allowed
18 the developments to occur on agricultural lands, with problems
19 developing only recently.

20 In exchange for zoning and other entitlements, counties
21 have imposed on developers of projects exactions such as
22 highways or other transportation improvements, shoreline or



1 other parks, beach access, and affordable housing. Recently,
2 developers of residential projects on agricultural lands have
3 expended millions of dollars in construction and development
4 costs and have sold thousands of residential lots.

5 In the case of the Hokulia project in south Kona, despite
6 arguments by the developer that it had vested rights to proceed
7 with the development based upon its reliance on the county's
8 actions, including the requisite zoning, subdivision permits,
9 and executed development agreements, and its substantial
10 expenditures in reliance thereon, the circuit court of the third
11 circuit ruled that the dwellings being constructed and planned
12 for the project were not farm dwellings and not a permitted use
13 in the state agricultural district. The court prevented any
14 further construction activities and directed a reclassification
15 of the project lands from the agricultural to the urban
16 district.

17 The counties, people in business, finance, and development,
18 and the community at large are concerned that such decisions
19 cause tremendous damage and a debilitating uncertainty to the
20 entire State. This decision sets a precedent for litigation
21 between and among developers, lenders, residential lot owners,
22 construction companies, realtors, title insurers, counties, and



1 the State; creates a chilling effect on investment within the
2 State; and clouds the viability and legality of past permitted
3 agricultural residential subdivisions throughout the State.

4 The State has suffered and will continue to suffer adverse
5 economic effects because the uncertainties caused by such
6 decisions have threatened jobs, will likely result in higher
7 costs, and will discourage investment in Hawaii. Hawaii is
8 highly dependent on outside investment and capital to ensure
9 that its economic engine operates smoothly. Besides tourism,
10 investment in real estate is a highly important component to a
11 healthy state economy. Uncertainty in the real estate market
12 will deter investment and drive up the cost of capital. With
13 the uncertainty of development projects in Hawaii, secondary
14 employment associated with such projects is affected, and there
15 is less demand for materials and supplies from local businesses.
16 Counties will be deprived of much needed property tax revenue
17 that would help provide infrastructure and services necessary
18 for a healthy community. The longer such uncertainty festers,
19 the more likely and pronounced will be its negative effects on
20 the State's economy.

21 Financial institutions believe that such decisions increase
22 the risk associated with development in Hawaii. Mortgage



1 lending makes home ownership possible. Lenders have made
2 significant loans on land with residences in agricultural
3 districts throughout the State. Decisions like the Hokulia
4 decision invalidate lenders' longstanding interpretation of
5 chapter 205, Hawaii Revised Statutes, and throw into doubt the
6 legality of other dwellings. Additionally, there is great
7 uncertainty about the reliability of permits and the requirement
8 of administrative exhaustion that places the security of
9 existing home loans at risk.

10 Realtors and title insurers believe increased prices may be
11 necessary to compensate for the increased risks associated with
12 making representations, disclosures, and warranties about the
13 legality of land use entitlements for individual properties.
14 Potentially, insurers face litigation over zoning entitlements
15 previously issued with respect to lands and homes in the
16 agricultural district. The Hokulia decision leaves realtors and
17 brokers in doubt about the validity of permits and approvals
18 previously issued for lots and homes in the agricultural
19 district. All of these effects are likely to reduce the volume
20 of real estate transactions and further reduce the affordable
21 housing supply.



1 Developers, investors, and people seeking homes will need
2 to carefully consider whether it is prudent to invest or
3 undertake projects in circumstances where zoning approvals and
4 entitlements remain open to judicial challenge for many years,
5 even despite valid development agreements.

6 The legislature finds that this is an unacceptable
7 situation. One of the key factors in adjusting to the changing
8 socio-economic conditions is the restructuring of the land use
9 system to distinguish between the best agricultural land (with
10 soil classified by the land study bureau's detailed land
11 classification as overall (master) productivity rating class A
12 or B) and more marginal agricultural land (with soil classified
13 by the land study bureau's detailed land classification as
14 overall (master) productivity rating class D or E).

15 Accordingly, the purpose of this Act is to remove the
16 uncertainty over past entitlement of certain subdivisions by
17 reclassifying certain marginal agricultural lands in the
18 agricultural district into the rural district, subject to
19 certain terms and conditions.

20 SECTION 2. (a) For purposes of this Act, the term
21 "project" shall mean any development:

22 (1) Approved by a county; and



1 (2) Where plats of subdivision:

2 (A) Have been approved on or before the effective
3 date of this Act;

4 (B) Creating two hundred or more lots, averaging less
5 than three acres in size; and

6 (C) On land located in the agricultural district.

7 (b) Lands within any project that have soil predominantly
8 classified by the land study bureau's detailed land
9 classification as overall (master) productivity rating of D or E
10 shall be classified as lands in the rural district as described
11 in section 205-2, Hawaii Revised Statutes, upon receipt by the
12 land use commission of a voluntary request from the developer
13 for the reclassification of the lands identified in the request,
14 without the need for any proceedings before the land use
15 commission.

16 (c) Upon reclassification, challenges to the creation and
17 development within the reclassified area of lots and associated
18 infrastructure, and of single-family residences on the lots, as
19 contemplated by county project approvals granted prior to the
20 effective date of this Act, shall be barred.

21 (d) On lands moved into the rural district pursuant to
22 this provision, the county shall not authorize, and no private



1 landowner shall create, any lots smaller in size than the lots
2 provided for in the project approvals granted by the county
3 prior to the effective date of this Act.

4 SECTION 3. This Act shall take effect upon its approval.

5

INTRODUCED BY: _____



JAN 22 2009



Report Title:

Land Use; Agricultural District

Description:

Allows the redesignation of certain residential subdivisions in the agricultural district into the rural district, subject to certain criteria.

